

In the Matter of
Petition of the
Connecticut Department of Public Utility Control
For Waiver of the Customer Proprietary Network
Rules by the Federal Communications Commission

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Before the
Federal Communications Commission
Washington, DC 20554

I. Introduction

Pursuant to 47 CFR §1.3, the Connecticut Department of Public Utility Control (Department) hereby seeks a waiver of the Customer Proprietary Network Information (CPNI) rules contained in 47 U.S.C. §222, Privacy of Customer Information (§222). Specifically, the Department seeks a waiver of the CPNI rules for the limited purpose of allowing the Department to effectuate the Local Exchange Election Process (LEEP) as established in Docket No. 94-10-05 DPUC Investigation of the Southern New England Telephone Company Affiliate Matters Associated with the Implementation of Public Act 94-83 (Dkt. 94-10-05) (Attached)¹

II. Background

In Docket No. 94-10-05, the Department approved the restructuring of the Southern New England Telephone Company, (SNET) into the "Telco" as the wholesale provider and SNET America Inc. (SAI) as the retail provider of local exchange service contingent upon the Department initiated a ballot process to allow all current SNET customers the opportunity to choose a new local exchange carrier. On its own Motion, the Department established Docket No. 97-08-12 DPUC Administration of the Local Exchange Election Process (Dkt. No. 97-08-12) to facilitate the ballot process. The proposed LEEP process provides for the ballot to contain all Connecticut certificated local exchange carriers (CLECs) who choose to be on the ballot, including SAI. The Department has determined that the LEEP process should be competitively neutral and that such a process is in the public interest.

NCS of Minneapolis Minnesota, has been retained as administrator of the ballot process and has recommended a procedure for implementing the ballot. The proposed process provides for all customers currently served by SNET to be migrated to one of the participating CLECs. In the first ballot stage all current SNET customers will receive a ballot containing a list of all eligible CLEC's, an information packet containing information on each participating CLEC, and instructions explaining how the customer chooses the CLEC of choice. Upon confirmation from NCS that a customer has chosen a particular CLEC, SNET must provide the CPNI information to the chosen CLEC. During the second ballot phase, those customers failing to choose a CLEC will be

¹ The Department notes that the dates for implementation have been changed.

allocated to a participating CLEC with the option to choose the CLEC of choice. Those customers failing to respond during this phase will remain with the allocated CLEC. Again the CPNI information must be transferred to the designated CLEC.

The LEEP committee which includes representatives of the CLECs, the Department and the Office of Consumer Counsel (OCC) has recognized that the FCC's current CPNI rules do not allow for the transfer of CPNI information without affirmative consent of the customer. The LEEP committee has considered requiring a signature from the customer or authorized representative on the ballot. However, the CPNI information that must be included would render the ballot too long and complicated to be effective. Furthermore, the added cost to the ballot would be prohibitive. Additionally, those customers who fail to respond and who therefore must be allocated to a CLEC will not have signed the ballot nor been notified of the CPNI rules. These customers would therefore not have given their consent to transfer CPNI information. In either instance, the Department cannot effectively comply with the CPNI rules and will therefore be unable to implement the ballot without a waiver by the FCC of the CPNI rules.

III Argument

In Dkt. No. 94-10-05, the Department has determined that the proposed LEEP ballot process is in the public interest because it provides the best opportunity for customer choice and will enhance effective competition. The Department does not believe that the ballot process can proceed without a waiver of the CPNI requirements contained in 47 CFR §64. 2007 (2) iii and v. Specifically, the Department requests a waiver of the noted CPNI rules for the limited purpose of transferring CPNI information during the ballot process and only for the purpose of effectuating the ballot process. Without this waiver, the Department does not believe that the public interest will be served because an attempt to introduce effective competition will be thwarted.

Even if the Department tried to include a notice of CPNI rights and signature section to the ballot, the notice requirements would be too lengthy making it impossible for the notice to be in compliance with FCC rules. Additionally, NCS (from prior ballot experience) estimates that as many as 40% or approximately 560,000 of the customers will fail to respond to the initial ballot and would therefore be allocated to a participating CLEC. These customers will not have signed an authorization to release the CPNI to another carrier and could not, under the current rules, be assigned to a CLEC. Since SNET will no longer be in the local exchange business, these customers would have no local exchange carrier. Clearly this condition would not be in the best interest of Connecticut customers. The Department believes that the requested waiver is appropriate, because without said waiver the best interests of Connecticut customers would not be served.

The Department requests that it be allowed to order transfer of CPNI information from SNET to the chosen or allocated CLEC without customer consent for the limited purpose of allowing the ballot process to proceed and for the limited time period (approximately 6 to 7 months) of the entire ballot process.

The Department contends that strict compliance with the CPNI rules in this limited instance is inconsistent with the public interest since such compliance would frustrate the proposed ballot process. The Department further believes that a waiver is appropriate because the special circumstances in the instant case warrants a deviation from these rules.

Additionally, due to the proposed schedule for the ballot, slated to commence June 1999, the Department hereby requests expedited treatment of this waiver request to allow it to complete the necessary functions to effectuate the ballot by the target date.

IV Conclusion

The Department hereby requests that the FCC exercise its discretion to waive the CPNI requirements contained in 47 CFR 64.2007 (2) iii and v for the limited purpose of allowing the transfer of CPNI information during the ballot process without the express consent of the customer and for the limited time period of the actual ballot process. The Department further requests expedited treatment of this waiver request.

Respectfully submitted,

CONNECTICUT DEPARTMENT OF
PUBLIC UTILITY CONTROL

Donald W. Downes
Chairman

Glenn Arthur
Vice-Chairman

Jack R. Goldberg
Commissioner

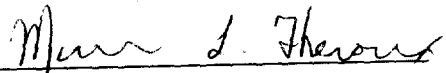
John W. Betkoski, III
Commissioner

Linda Kelly Arnold
Commissioner

July 16, 1998

Connecticut Department of
Public Utility Control
Ten Franklin Square
New Britain, CT 06051

CERTIFICATION


Miriam L. Theroux
Commissioner of the Superior Court



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL
TEN FRANKLIN SQUARE
NEW BRITAIN, CT 06051

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DOCKET NO. 94-10-05 DPUC INVESTIGATION OF THE SOUTHERN NEW
ENGLAND TELEPHONE COMPANY AFFILIATE
MATTERS ASSOCIATED WITH THE IMPLEMENTATION
OF PUBLIC ACT 94-83

June 25, 1997

By the following Commissioners:

Thomas M. Benedict
Jack R. Goldberg
Janet Polinsky

DECISION

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DECISION

I. EXECUTIVE SUMMARY

In response to a Procedural Order issued in this docket, the Southern New England Telecommunications Corporation (SNET) submitted to the Department of Public Utility Control (Department) a proposed plan of reorganization. The plan proposes to realign operations of SNET and its largest subsidiary, the Southern New England Telephone Company (Telco), to execute SNET's business strategy and better serve the needs of its principal customers. Specifically, SNET proposes to:

- separate retail and wholesale business units that currently reside within the common corporate structure of the Southern New England Telephone Company (Telco);
- transfer all of the Telco's retail operations and retail customers to the Telco's competitive local exchange carrier (CLEC) affiliate, SNET America Inc. (SAI), and discontinue the Telco's retail offerings;
- empower SAI to offer to all end users, on a statewide basis, a variety of services, including local services, intrastate services, interstate services, international calling and a number of enhanced services;
- operate SAI as a CLEC subject to the same state and federal regulatory requirements imposed upon other CLECs;
- continue to operate the Telco as a telephone company / public service company for purposes of Connecticut law;
- restrict the business purpose of the Telco to meeting the needs of CLECs and other wholesale customers;
- maintain ownership and operational control of all distribution plant and core network infrastructure in the Telco, subject to all requirements of state and federal law;
- continue to operate the Telco in accord with the Department's March 13, 1996 Decision in Docket No. 95-03-01 and as an incumbent local exchange carrier (ILEC) under federal law;
- introduce Telco wholesale service tariffs, priced initially at retail minus avoided cost, for all existing Telco service offerings consistent with current federal pricing standards;
- price new wholesale services offered by the Telco at TSLRIC plus a contribution to SNET's overhead;
- preserve Telco tariffs for intrastate access, interstate access and unbundled network elements previously approved by the Department; and
- conduct all business transactions between SAI and the Telco in accordance with Parts 32 and 64 of FCC regulations as amended by the 1996 Federal Act.

In this Decision, the Department approves the proposed plan of reorganization, but makes several important modifications intended to promote competition and protect the public interest in an increasingly competitive market. Specifically, the Department will not permit any transfer or assignment (as proposed by SNET) to SAI of the Telco's retail customers. Rather, the Department will conduct an impartial election process in 1998 to permit business and residential subscribers adequate opportunity to exercise

their choice of retail service providers. To that end, on or before September 1, 1997, the Department will select a program administrator to manage the election process.

Such process, or balloting, will be conducted by Modified Labor Market Areas (MLMAs) as defined by the Department in Docket No. 94-07-03, DPUC Review of Procedures Regarding the Certification of Telecommunications Companies and of Procedures Regarding Requests by Certified Telecommunications Companies to Expand Authority Granted in Certificates of Public Convenience and Necessity. The balloting will commence in the first MLMA on March 1, 1998 and will extend to the remaining MLMAs at four week intervals until the entire service area of the Telco is covered. Each current Telco customer will be mailed a ballot and will be given four weeks to make an affirmative selection and return the ballot by mail to the program administrator. Any subscriber failing to elect a retail provider in the given timeframe will be randomly assigned by the administrator to a qualified retail provider authorized to provide local service in the subscriber's MLMA. Assignment by the administrator of default subscribers to any particular provider will be in direct proportion to the percentage of eligible subscribers in the relevant MLMA that have affirmatively selected that firm to be their retail provider. Each subscriber will be provided by mail positive confirmation of the selection within two weeks of the ballot deadline. Each subscriber who fails to make an affirmative selection will be notified of the retail provider to which the subscriber has been assigned. Each subscriber for whom random assignment is made will then have two weeks to change that assignment. Subsequent to the close of the election process, any subscriber requesting a change in their designated retail provider may be subject to, a nominal fee for any administrative costs incurred by the CLECs in satisfying the customer's request.

In this Decision, the Department also modifies the proposed structural relationship between the Telco and SAI in order to protect the public's interest in full and fair competition. Specifically, the Department limits the flow of information from the Telco to SAI to only that information required for management of the retail subscriber function, and requires that the same type of information be made available to other CLECs, on the same terms and conditions .

Additionally, in this Decision, the Department adopts many of the structural and transactional standards set forth in the Telecommunications Act of 1996 and the Federal Communications Commission's implementation of that legislation requiring that dealings between the Telco and SAI meet those standards. Specifically, the Department requires that SAI:

- operate independently from the Telco;
- maintain books, records, and accounts in the manner prescribed by the Department and separate from the books, records, and accounts maintained by the Telco;
- have separate officers, directors, and employees from those of the Telco;
- not enter into any credit arrangement which permits a creditor, upon default, to have recourse upon the assets of the Telco; and
- conduct all transactions with the Telco on an arm's length basis with all such

transactions reduced to writing and available for public inspection.

Furthermore, the Telco must:

- not discriminate between any affiliate business unit of the Telco and any nonaffiliate entity in the provision, procurement or price of goods, services, facilities and information, or in the establishment of performance standards;
- account for all transactions with any affiliate business unit in accordance with accounting principles previously adopted or approved by the Department;
- fulfill any bona fide request from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates;
- not provide any facilities, services or information concerning its provision of facilities and/or services to any CLEC affiliate entity unless such facilities, services or information are made available to other CLEC providers in the Connecticut market on the same terms and conditions;
- charge any CLEC affiliate, or impute to itself (if using the access for provision of its own services), a monetary sum for providing access to its telephone exchange services and exchange access services that is no less than the monetary sum charged to any unaffiliated CLEC for such service;
- provide any facilities, services or information concerning its provision of such facilities and/or services to all CLEC providers at the same rates and on the same terms and conditions with costs properly allocated among interested affiliated and nonaffiliated entities; and
- not engage in marketing and/or sales of facilities, services or information offered by any CLEC affiliate as either a fulfillment agent, joint representative or partner.

Finally, the Department explicitly states that any intentional action taken by the Telco that would reduce the number of wholesale offerings to CLECs and stifle CLECs' competitive initiatives would be sufficient cause for the Department to immediately reexamine SNET's reorganization and to take actions necessary to restore competitive balance in the market.

II. PARTIES AND INTERVENORS

The Department recognized as parties in this proceeding: the Southern New England Telephone Company (Telco), 227 Church Street, New Haven, Connecticut 06510; the Southern New England Telecommunications Corporation (SNET), 227 Church Street, New Haven, Connecticut 06510; Office of Consumer Counsel (OCC), Ten Franklin Square, New Britain, Connecticut 06051; AT&T Communications of New England (AT&T), 32 Avenue of the Americas, New York, New York 10013; MCI Telecommunications Corporation (MCI), Five International Drive, Rye Brook, New York 01573, MFS Intelenet of Connecticut, Inc. (MFS) 6 Century Drive, Suite 300, Parsippany, New Jersey 07054; New York Telephone Company (NYTel), 1095 Avenue of the Americas, New York, New York 10036; New England Cable Television Association (NECTA), c/o Ottenberg Dunkless & Mandl, 260 Franklin Street, Boston,

Massachusetts 02110. The Department also recognized Cablevision Lightpath-CT as an intervenor to this proceeding.

III. DOCKET HISTORY AND CONDUCT OF THE PROCEEDING

A. BACKGROUND

On July 1, 1994, Public Act 94-83, "An Act Implementing The Recommendations of The Telecommunications Task Force" (the Public Act or Act), became Connecticut law. The Act was a broad strategic response to the changes facing the telecommunications industry in Connecticut. At the core of the Public Act are the principles and goals articulated therein. Section 2 (a) of the Act provides in pertinent part:

Due to the following: affordable, high quality telecommunications services that meet the needs of individuals and businesses in the state are necessary and vital to the welfare and development of our society; the efficient provision of modern telecommunications services by multiple providers will promote economic development in the state; expanded employment opportunities for residents of the state in the provision of telecommunications services benefit the society and economy of the state; and advanced telecommunications services enhance the delivery of services by public and not-for-profit institutions, it is, therefore, the goal of the state to (1) ensure the universal availability and accessibility of high quality, affordable telecommunications services to all residents and businesses in the state, (2) promote the development of effective competition as a means of providing customers with the widest possible choice of services, (3) utilize forms of regulation commensurate with the level of competition in the relevant telecommunications service market, (4) facilitate the efficient development and deployment of an advanced telecommunications infrastructure, including open networks with maximum interoperability and interconnectivity, (5) encourage shared use of existing facilities and cooperative development of new facilities where legally possible, and technically and economically feasible, and (6) ensure that providers of telecommunications services in the state provide high quality customer service and high quality technical service.

Conn. Gen. Stat. § 16-247a(a).

The central premise of the legislation is that broader participation in the Connecticut telecommunications market will be more beneficial to the public than will broader regulation. It is significant, however, that the legislature recognized that services historically offered by a single provider would not become subject to effective competition simply by passage of legislation removing statutory barriers to competition. The legislature thus entrusted the Department with the responsibility of defining a path to a competitive telecommunications market and managing the transition to competition. Therefore, upon passage of Public Act 94-83, the Department set forth a framework to

implement the legislation. Pursuant to that implementation framework, over the past three years, the Department has orchestrated an orderly transition to competition in Connecticut's telecommunications markets.

B. IMPLEMENTATION OF PUBLIC ACT 94-83

The Department commenced formal implementation of Public Act 94-83 on July 1, 1994. The Department's investigative efforts have spanned four issue areas: 1) conceptual infrastructure, 2) competition, 3) alternative regulation and 4) holding company affiliate structure. The following discussion briefly covers the dockets and subject matters contained in each phase.

The Conceptual Infrastructure Phase consisted of Docket No. 94-07-01, The Vision For Connecticut's Telecommunications Infrastructure, in which a Decision was issued on November 1, 1994. The Department initiated that docket in recognition of the fact that effective and efficient implementation of Public Act 94-83 required at the outset an investigation of the state's telecommunications infrastructure that serves as the foundation for the provision of all telecommunications services. In its Decision, the Department identified the attributes required of any future infrastructure to achieve the Act's goals, articulated intended Department initiatives to facilitate the development of a future infrastructure that exhibits those identified attributes, and identified issues to be more fully explored in subsequent implementation dockets.

For the Competition Phase, in July of 1994, the Department initiated eight highly focused, limited discovery dockets to address specific issues raised by the legislature's commitment to broader market participation in Connecticut: Docket No. 94-07-02, Development of the Assumptions, Tests, Analysis, and Review to Govern Telecommunications Service Reclassifications in Light of the 8 Criteria Set Forth in Section 6 of Public Act 94-83; Docket No. 94-07-03, DPUC Review of Procedures Regarding the Certification of Telecommunications Companies and of Procedures Regarding Requests by Certified Telecommunications Companies to Expand Authority Granted in Certificates of Public Convenience and Necessity; Docket No. 94-07-04, DPUC Investigation into the Competitive Provision of Local Exchange Service in Connecticut; Docket No. 94-07-05, DPUC Investigation into the Competitive Provision of Customer Owned Coin Operated Telephone Service in Connecticut; Docket No. 94-07-06, DPUC Investigation into the Competitive Provision of Alternative Operator Service in Connecticut; Docket No. 94-07-07, DPUC Investigation of Local Service Options, Including Basic Telecommunications Service Policy Issues and the Definition and Components of Basic Telecommunications Service; Docket No. 94-07-08, DPUC Exploration of Universal Service Policy Issues; and Docket No. 94-07-09, DPUC Exploration of the Lifeline Program Policy Issues. Those proceedings have been completed and Final Decisions issued by the Department serve as the principal regulatory framework governing the telecommunications market in Connecticut.

Separate from the Competition Phase and the Alternative Regulation Phase, which were conducted concurrently, the Department initiated individual investigations of each of the state's incumbent telephone companies' (local exchange carriers (LECs))

costs of providing telecommunications services for the purpose of constructing a financial and procedural framework for use by the Department in evaluating the telephone companies' pricing of unbundled network elements and wholesale basic local service as well as other pricing initiatives. Docket No. 94-10-01, DPUC Investigation into The Southern New England Telephone Company's Cost of Providing Service (Final Decision issued on June 15, 1995); Docket No. 94-11-02, DPUC Investigation into the New York Telephone Company's Cost of Providing Service; and Docket No. 94-11-05, DPUC Investigation into the Woodbury Telephone Company's Cost of Providing Service.

With similar intent, the Department initiated individual companion dockets to review each local exchange carrier's depreciation policies and accounting practices: Docket No. 94-10-03, DPUC Investigation into The Southern New England Telephone Company's Intrastate Depreciation Rates (Final Decision issued on November 21, 1995); Docket No. 94-11-04, DPUC Investigation into The New York Telephone Company's Intrastate Depreciation Rates; and Docket No. 94-11-07, DPUC Investigation into The Woodbury Telephone Company's Intrastate Depreciation Rates. The detailed financial reviews were deemed essential to full and fair examination of the impact upon competition of an alternative regulatory framework or treatment of the local exchange carrier community by the Department. On March 13, 1996, the Department approved a request by the Southern New England Telephone Company for alternative regulation in Docket No. 95-03-01, Application of The Southern New England Telephone Company for Financial Review and Proposed Framework for Alternative Regulation.

Equally essential to the achievement of effective competition as prescribed by Public Act 94-83 are dockets initiated by the Department to address the mandate of Conn. Gen. Stat. § 16-247b to unbundle "the noncompetitive and emerging competitive functions of a telecommunications company's local telecommunications network that are used to provide telecommunications services and which . . . are reasonably capable of being tariffed and offered as separate services." Docket No. 94-10-02, DPUC Investigation into the Unbundling of The Southern New England Telephone Company's Local Telecommunications Network (Final Decision issued September 22, 1995)¹; Docket No. 94-11-03, DPUC Investigation into the Unbundling of the New York Telephone Company's Local Telecommunications Network; and Docket No. 94-11-06, DPUC Investigation into the Unbundling of the Woodbury Telephone Company's Local Telecommunications Network.

Docket No. 95-06-17, Application of The Southern New England Telephone Company for Approval to Offer Unbundled Loops, Ports and Associated Interconnection Arrangements, Docket No. 95-11-08, Application of The Southern New England Telephone Company for Approval to Offer Interconnection Services and Other Related

¹ At the participants' request, the Department separated from Docket No. 94-10-02 the issue of mutual compensation between the Southern New England Telephone Company (Telco) and wireless carriers. That issue was considered in Docket No. 95-04-04, DPUC Investigation into Wireless Mutual Compensation Plans, in which a Final Decision was issued on September 22, 1995.

Items Associated with the Company's Local Exchange Access Tariff, and Docket No. 96-09-22, DPUC Investigation into the Southern New England Telephone Company Unbundled Loops, Ports and Associated Interconnection Arrangements and Universal Service Fund in Light of the Telecommunications Act of 1996, arose in consequence of the Department's Decision in Docket No. 94-10-02 regarding the unbundling of the Telco's local telecommunications network as well as in response to other implementation dockets wherein the Department issued Decisions concerning resale of the Telco local network. In its March 25, 1997 Decision in Docket No. 95-06-17, the Department established rates and charges for the Telco's wholesale local basic service offering and certain related features. In the July 17, 1996 Decision in Docket No. 95-11-08, the Department established rates and charges for certain network features, functions and specialized services associated with the Telco's Unbundling, Wholesale and Interconnection Tariff sought by CLECs to support their marketing efforts; specifically: trunk interconnection, E-911 system interconnection, Service Provider Local Number Portability, NXX administration, and directory customer guide service. In the April 23, 1997 Decision in Docket No. 96-09-22, the Department approved wholesale rates and charges for the Telco's unbundled loops, ports and associated interconnection arrangements offered only to CLECs for use in their respective retail service offerings.

As detailed above, much of the Department's implementation efforts have focused on ensuring that policies, rules and pricing standards applied to the Telco and its infrastructure are consistent with Public Act 94-83's mandate for an environment that fosters competition in the Connecticut telecommunications market. However, in Docket No. 94-10-04, DPUC Investigation into Participative Architecture Issues, the Department prescribed the scope and scale of responsibilities applicable to all new entrants to Connecticut's telecommunications markets in order that the Act's goals can and will be achieved.

The final phase of implementation of Public Act 94-83 involves the instant proceeding which the Department initiated to examine the financial, structural and operational impact on SNET and the telecommunications marketplace of broader competition and increased discretionary authority.

C. THE NEW TELECOMMUNICATIONS ENVIRONMENT IN CONNECTICUT

Public Act 94-83 challenged certain historical methods and principles of regulation that previously guided Department actions. Earlier statutory authority sought to maximize public benefit by authorizing only a single telecommunications service provider for any given market. The Department, therefore, was able to direct its attention solely at regulating the conduct of a single dominant service provider against a desired public standard of affordable and available telephone service. Under provisions in Public Act 94-83, the Department has faced an unprecedented task of managing the introduction of broader participation into the, heretofore, single-provider market without unduly risking the availability, accessibility, affordability and quality of basic telecommunications services to all Connecticut users.

Since July 1994, during the conduct of the above detailed dockets, the Department has endeavored to ensure that: (1) all telecommunications providers, new entrants as well as incumbent telephone companies, are able to fairly compete in the Connecticut telecommunications market; and (2) the interests of the Connecticut public are protected. To date, the efforts of the Connecticut legislature and the Department have resulted in the certification of 19 companies to offer retail local telecommunications services in Connecticut in direct competition with the incumbent telephone companies; six additional applications are pending before the Department.² Under terms and conditions set forth by the Department in Docket No. 94-07-03, every CLEC is committed to serving any customer in its Modified Local Market Area(s), i.e., any residential or business user that requests service, within three years of the CLEC's certification. The legislative goal that Connecticut residents be afforded a greater choice among telecommunications products, providers, and prices is being realized in the concerted efforts to date of this Department.

D. THE TELECOMMUNICATIONS ACT OF 1996

More than a year and a half after Connecticut opened its telecommunications markets to competition, the United States Congress enacted legislation, in the form of the Telecommunications Act of 1996 (1996 Federal Act), designed to revise national telecommunications policy and to remove unwarranted statutory and court-ordered barriers to competition among segments of the telecommunications industry. Upon review of the federal legislation the Department is of the opinion that the policies and positions adopted by the Department in response to Public Act 94-83 are generally in accord with provisions contained in the 1996 Federal Act.³

E. DOCKET SCOPE AND CONDUCT OF THE PROCEEDING

As evidenced in the discussion of the implementation dockets contained in subsection B of this section, the Department's relevant efforts to date have focused on: (1) providing greater access to the Connecticut telecommunications markets historically served by the state's three local exchange companies (LECs), The Southern New England Telephone Company, The New York Telephone Company and The Woodbury Telephone Company; (2) setting rules and prices for local exchange access by

² Under terms and conditions set forth in Docket No. 94-07-03, the Department has to date approved applications for CLEC authority from AT&T, Brooks Fiber Communications of CT, Inc., Cablevision Lightpath of CT, Inc., Cable & Wireless, Inc., Commonwealth Long Distance Company, CRG International, CT Telephone & Communications Services, Dial & Save of Connecticut, Inc., Excel Communications, Inc., GE Capital Communications et al, Intermedia Communications, Inc., LCI International Telecom Corp., LDDS/WorldCom, MCI Metro, MFS Intellenet, Sprint, TCI Telephony of CT, Inc., Teleport Communications Group, and WinStar Wireless of CT.

³ One discrepancy between federal and Department policy is in the pricing of wholesale local basic service. See Decision, Docket No. 96-03-19, Petition of The Southern New England Telephone Company for Suspension of Section 251(c)(4) of the Telecommunications Act of 1996, May 17, 1996. Additionally, in its Decision in Docket No. 94-07-05, the Department limited the offering of customer owned coin telephone (COCOT) service in Connecticut to LECs and CLECs. However, the Department recently re-opened Docket No. 94-07-05 to reexamine the terms and conditions under which COCOT service will be offered in Connecticut.

competitors to those portions of the incumbent LECs' infrastructures necessary to the development of competition; and (3) reducing the level of Department involvement deemed necessary in matters of competitive conduct.

In the instant docket, however, the Department sought to critically examine the financial, structural and operational impact on SNET of broader competition and increased discretionary authority resulting from the Department's previous implementation efforts, the development of competition and introduction of the 1996 Federal Act. Specifically, the Department is compelled to examine the constructs and the conduct of SNET and its subsidiaries to ensure that affiliate strategies, operational structures and performance standards conform with the prevailing rules and regulations governing telecommunications providers. Therefore, on December 6, 1996, the Department issued a Statement of Scope of the Proceeding in this docket expressing its intention to examine the following:

- the organizational and operational structures proposed by SNET to pursue the roles and responsibilities accorded it by Public Act 94-83, the 1996 Federal Act and prior Department decisions;
- the legal/regulatory provisions, technological considerations and market conditions that serve as planning limitations on SNET in the proposed organizational and operational structures;
- the scope and scale of the financial transactions envisioned by SNET's proposed organizational and operational structures;
- whether there exists a uniform set of managerial principles governing the formation, operation, evaluation and dissolution of affiliate business relationships;
- the basis for determining cost and/or assigning value to any relationship with, or offering by, one affiliate business unit to another;
- the scope of independent operational authority and accountability accorded to managing officers of the respective affiliate business units; and
- the impact of any proposed organizational structure and/or affiliate relationship on the development of full and fair competition in Connecticut.

In order to efficiently accomplish that which the Department envisioned from this docket, the Department established a scope of directed inquiry involving a three-step development process (SNET submittal, comments by participants and reply comments by SNET). Initially, the Department directed SNET to file a proposed organizational and operational structure to be employed in Connecticut as its initial submission. SNET was also directed to include in its submission:

- the rationale for its organizational and operational structures sufficient to permit the Department to fully evaluate the relative merits of SNET's proposal;
- a description of the charter of each of the respective affiliate business units and their respective role within the SNET strategy, including products/services responsibilities where appropriate;
- a description of the scope of any service performed by an identified business unit or between business units and the corporate parent for 1997;
- a justification for having any such service performed by the identified business unit

- or the corporate parent for 1997;
- a pro forma projection of the estimated monetary value of any such service performed in 1997 on behalf of an identified business unit by another business unit or the corporate parent, including a projection of the estimated monetary value if such service were to be performed within the identified business unit;
- a description of the scope of any common corporate services provided to the affiliate business unit by the corporate parent in 1997;
- a pro forma projection of the level of common corporate cost assigned to any identified business unit for 1997 as well as the allocation factor used to make such assignment; and
- a pro forma projection of the level of common corporate cost not assigned to any identified business unit for 1997.

Following SNET's filing, parties and intervenors were afforded opportunity to submit formal comments concerning relative risks and/or merits of SNET's submission.⁴ SNET was subsequently afforded the opportunity to submit its reply to the comments of the other parties.

By Notice of Hearing dated February 3, 1997, public hearings were conducted on March 31, 1997 and April 1, 2, and 3, 1997 in the offices of the Department, Ten Franklin Square, New Britain, Connecticut 06051. The hearing was continued to April 17, 1997, at which time it was closed. The Department issued a draft Decision in this proceeding on June 5, 1997. Pursuant to Notice, all parties and intervenors were provided opportunity to file written exceptions and to present oral arguments on the draft Decision.

IV. SNET REORGANIZATION PROPOSAL

On January 1, 1997, SNET and the Telco (jointly, the Company) filed with the Department a joint proposal for reorganization of certain corporate operations. The major components of the reorganization proposal are as follows:

- SNET will separate the retail and wholesale business units that currently reside in the Telco.
- Upon the proposed effective date of the reorganization, January 1, 1998, the Telco will transfer all of its retail operations and retail customers to SNET America, Inc. (SAI),⁵ and the Telco will no longer offer retail telecommunications services.
- SAI will offer to all end users a variety of retail services on a statewide basis, including local, intrastate, interstate, international calling, and a number of enhanced services.⁶

⁴ OCC and AT&T submitted comments regarding the SNET/Telco submission.

⁵ SAI is a wholly owned subsidiary of SNET currently offering interstate and international long distance services in Connecticut.

⁶ On March 18, 1997, SAI filed with the Department an application for a Certificate of Public Convenience and Necessity (CPCN) to become a certified local exchange carrier (CLEC). That application is being considered by the Department in Docket No. 97-03-17, Application of SNET America, Inc. for a

- SAI will be subject to the same state and federal regulatory requirements as are imposed on other CLECs.
- The Telco will continue to operate as a telephone company/public service company for purposes of Connecticut law.
- The Telco will restrict its business purpose to serving the needs of CLECs and other wholesale companies.
- The Telco will retain ownership and operational control of all distribution plant and core network infrastructure, and will be subject to all relevant state and federal requirements.
- The Telco will be regulated pursuant to the alternative regulation plan approved by the Department in the March 13, 1996 Decision in Docket No. 95-03-01, and will be regulated as an ILEC under federal law.
- The Telco will establish wholesale service tariffs for all existing Telco service offerings, priced initially at retail minus avoided cost, consistent with current federal pricing standards.
- The Telco will price new wholesale services at Total Service Long Run Incremental Cost (TSLRIC) plus a reasonable contribution to the Telco's overhead costs.
- The Telco will preserve tariffs for intrastate and interstate access and unbundled network elements as previously approved by the Department.
- The Telco's relationship with its affiliates will continue to be governed by Parts 32 and 64 of the FCC's regulations as embodied in the Telco's Cost Allocation Manual (CAM).

SNET's arguments supporting its proposal are detailed in the next section.

V. PARTICIPANTS' POSITIONS

A. THE SOUTHERN NEW ENGLAND TELECOMMUNICATIONS CORPORATION/THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY

1. General Rationale in Support of Proposed Reorganization

The Company asserts that its proposed reorganization will focus the Telco on an aggressive wholesale strategy with a primary goal of encouraging and stimulating usage of the Telco's network by all service providers, thereby promoting local service competition. At the same time, SAI will be in a position to compete aggressively in the retail market further accelerating the benefits of competition in the retail market. According to SNET, the proposed reorganization will benefit CLECs, residents and businesses throughout the state.

The Company argues that reorganization is a necessary and logical response to the dramatic legislative changes of the last two years which have profoundly affected the telecommunications industry. Specifically, SNET contends that the passage of the 1996 Federal Act, and the FCC Order interpreting and expanding the reach of that act,⁷

Certificate of Public Convenience and Necessity

⁷ First Report and Order, Implementation of the Local Competition Provisions of the

have compelled not only it but all industry participants to seriously reconsider their business strategies. From SNET's perspective, requirements in the 1996 Federal Act and the FCC Order coupled with the various state requirements have placed the Telco, as currently structured, in an untenable market position.

The Company contends that the most notable market disadvantage presented to the Telco is the requirement that it provide, at wholesale, essentially all of its retail telecommunications services including discount plans, service packages and promotions, at a 17.8% discount,⁸ regardless of whether that discount brings the wholesale price below cost, a disadvantage that is exacerbated by a service-by-service imputation standard. According to the Company, the downward spiral created by the requirement that retail services be offered net of the wholesale discount essentially prevents the Telco from effectively competing with the CLECs, denies it the ability to differentiate its retail services from those of its competitors, and rules out any opportunity for the Telco to competitively price its retail services.

The Company argues that in contrast to the restrictive treatment of ILECs, the FCC Order secures the competitive viability of CLECs. In SNET's view, CLECs can readily differentiate their products by combining their own facilities with resold telco services creating new service packages, and changing their prices through discounts and promotions (as dictated by market conditions) without offering these discounts to other competitors. Moreover, the Company contends that given the resale requirements imposed on ILECs, CLECs are assured by law a competitive edge over ILECs in both pricing and product innovation.

Further, the Company argues that the Telco, unlike its competitors, is constrained by additional administrative burdens, including involved regulatory processes and cost study requirements, that deter the Telco's ability to both react quickly to the marketplace and maintain any long-term sustainable advantage effectively restricting the benefits of competition for the public.

The Company thus submits its proposed reorganization is the best available strategy to enable both the Telco and SAI to emerge as viable competitors in their respective markets. SAI will offer new and innovative services and bundles of services while the Telco will be a wholesale provider and offer fully functional telecommunications services and unbundled network elements to SAI and all other CLECs in a nondiscriminatory manner. In the Company's view, its proposed reorganization will promote the pro-competitive goals of the Act and the 1996 Federal Act, encourage competition and technological innovation in the marketplace. Company Brief, pp. 1-5, 10-14.

2. Public Act 94-83

SNET asserts that the focus of Public Act 94-83 is two-fold: the effective and

Telecommunications Act of 1996 (FCC Order), August 8, 1996.

⁸ Except as otherwise provided in Interconnection Agreements.

efficient development of competition and protection of the public interest. The Company contends that the proposed reorganization is consistent with these objectives. Specifically, in SNET's view, the proposed reorganization will promote wholesale competition by strengthening the Telco's ability to be an aggressive wholesale provider. Further, SNET asserts that reorganization will enhance retail competition by permitting SAI to fully participate in the retail market. The Company states that SAI's viability in Connecticut's competitive telecommunications marketplace will be defined by its ability to successfully bundle its available services. SNET envisions SAI answering competitors' offerings with a variety of telecommunications services, including local, intrastate, interstate, international calling, and a number of enhanced services to all end users. According to the Company, SAI's entrance into the market on equal footing with other CLECs will encourage competitive prices, increased choice for consumers, and innovative and expanded service offerings.

The Company next points to Public Act 94-83's goal to "utilize forms of regulation commensurate with the level of competition in the relevant telecommunications service market." Under the Company's proposal, upon the effective date of the reorganization, SAI will be regulated like all other CLECs while the Telco will continue to be subject to the rate regulation requirements previously adopted by the Department in Docket No. 95-03-01. In SNET's view, the continuance of the current regulatory structure is consistent with the Public Act. SNET Brief, pp. 23-27.

The Company further offers discussion regarding its proposed reorganization in the context of other Public Act 94-83 provisions. According to the Company, because SAI will be offering retail telecommunications services pursuant to its certification under Conn. Gen. Stat. § 16-247g, it will not be required to seek reclassification of its services from "noncompetitive" to "competitive" as would be required of the Telco by Section 16-247f of the Act. Furthermore, as a competitive telecommunications carrier, SAI will not (according to the Company) be subject to the imputation standard set forth in Conn. Gen. Stat. § 16-247b(b) for the Telco, but its retail tariff filings will be subject to Department review and approval just as are the retail tariff filings of other CLECs. The Company further explains that upon approval of SAI's request for a CPCN, SAI will be subject to those obligations set forth in the Public Act and in the Department's Decisions in Docket No. 94-07-03 and Docket No. 94-07-07 for all CLECs (e.g., the provision of service on a statewide basis within three years from certification, compliance with the post-certification filing requirements established by the Department, and the provision of "one local service offering that is equivalent in design and calling provisions to the basic, flat rate local calling package offered by the relevant telephone company").⁹

⁹ The Company further states that as a CLEC, SAI will be subject to certain market responsibilities contained in the 1996 Federal Act, including the requirement that SAI interconnect with other telecommunications carriers and allow resale of its services without unreasonable conditions or restrictions. SAI will also be required to provide: number portability to the extent technically feasible; dialing parity which includes nondiscriminatory access to telephone numbers, operator services, directory assistance, directory listings, with no unreasonable dialing delays; access to rights-of-way by competing providers at nondiscriminatory rates, terms, and conditions; and reciprocal compensation arrangements.

The Company states that following adoption of the proposed reorganization, the Telco, as a wholesaler, will continue to be broadly regulated by the Department. According to the Company, on the effective date of the reorganization, all existing retail offerings will be available to CLECs as wholesale services at prices equivalent to the price of the current comparable retail offering minus avoided costs; any new wholesale services and unbundled elements introduced after the effective date of the reorganization will be priced at their respective TSLRIC plus a contribution to joint and common costs. The Company states that any change in wholesale price will remain subject to the Department's approval. Once a new wholesale price is approved by the Department that wholesale service offering would then be subject to the Alternative Regulation Plan approved in Docket No. 95-03-01.

The Company asserts that with adoption of this proposal, the Telco will no longer be subject to the wholesale pricing standard set forth in §252(d)(B) of the 1996 Federal Act because the Telco will no longer be offering retail telecommunications services. Furthermore, the Company asserts that with adoption of this proposal SAI will not be subject to the imputation standard required of the Telco in Conn. Gen. Stat. §16-247b(b). However, the Company contends that the intent of both standards will nonetheless be preserved in the proposed reorganization. The Company maintains that under the proposed reorganization, SAI and the other CLECs will pay either tariffed rates or rates subject to publicly available interconnection agreements that must by law be nondiscriminatory and approved by the Department. According to the Company, this will level the playing field without regard for any inaccuracies inherent in the measurement of avoided costs or the difficulties associated with calculating the imputation standard thus fully achieving the purposes of the state standards as well as the federal standards.

The Company also maintains that the proposed reorganization will further the infrastructure development goals set forth in PA 94-83. According to the Company, just as SAI will be encouraged to innovate the wholesale company will be encouraged to innovate and invest. Specifically, with a major customer as its own retail arm and no longer "captive," the Telco will have to be competitive in pricing and product innovation in order to succeed.

The Company contends that the proposed reorganization will permit the Telco to focus on maintaining and investing in its network facilities and product development in order to serve and grow its wholesale customer base. In the Company's view, the Telco's goal will be to attract more competitors into Connecticut and onto its network through aggressive pricing and product development. The Company claims that benefits from the Telco's improved provisioning of wholesale services to CLECs will flow directly to their retail customers, which is consistent with the Public Act's goals that focus on network infrastructure sharing and development.

In addition, the Company asserts that with approval of the proposed reorganization, the Telco will continue to improve its capability and capacity for processing CLECs' orders as electronic interfaces continue to evolve. The Company

notes that the Telco is currently in the process of completing the first development phase of its Mechanized Service Access Platform (MSAP) which will process information exchanges and wholesale service requests to and from the Telco and their CLEC customers. By January 1, 1998, the Telco will also have in place service measurements, service standards, and financial remedies for wholesale services and unbundled network elements.

In sum, the Company claims that the proposed reorganization will stimulate both wholesale and retail competition in the marketplace and ensure continued investment in and advancement of Connecticut's telecommunications infrastructure consistent with the expressed goals of Public Act 94-83. The Company states that increased competitiveness of the telecommunications marketplace warrants a regulatory framework commensurate with the level of competition, and commits the Telco to meeting its obligations as an ILEC even as it positions itself to be an aggressive wholesaler. Company Brief, pp. 27-33; Company Reply Brief pp. 2-28

3. The 1996 Federal Act and Successor Obligations

The Company states that its proposed reorganization will accelerate realization of the goals of the 1996 Federal Act. Specifically, the proposed reorganization will provide CLECs with nondiscriminatory access to the Telco's network facilities and encourage competition and innovation in the marketplace. A separate wholesale entity will also provide the necessary incentive and motivation for the Telco to meet and exceed the ILEC requirement to serve all CLECs and other telecommunications carriers in a nondiscriminatory manner and develop innovative services and technologies for these customers set forth in §251(c) of the 1996 Federal Act.

The Company argues that with approval of the proposed reorganization and the realignment of retail market responsibilities between the Telco and SAI, SAI will not by virtue of that realignment be an ILEC or be subject to ILEC obligations set forth for the incumbent local exchange carrier in §251(c) of the 1996 Federal Act. According to the Company, SAI is not currently, nor will it be in the future, an incumbent local exchange carrier (ILEC) as defined in §251(h)(1) of the 1996 Federal Act because it did not offer local exchange service in any area on the effective date of that act and will not be a "successor or assign" of the Telco on the effective date of the reorganization.

The Company is of the opinion that a critical factor dictating successor obligations is the underlying nature of the assets retained by the Telco. The Company maintains that if an entity succeeds to all of the assets of an ILEC then that entity is arguably a "successor or assign" of an ILEC and should be regulated as such. The Company contends, however, that should an entity receive only a limited portion of an ILEC's assets, and those assets are unnecessary to satisfy the ILEC's obligations under the 1996 Federal Act, then that entity does not become an ILEC by virtue of the transaction. Accordingly, the Company asserts that the nature of the assets transferred from an ILEC should be analyzed, in conjunction with its obligations under §251(c) of the 1996 Federal Act, to determine whether the transferee is truly a "successor or assign" of an ILEC and should succeed to the obligations of the ILEC.

The Company explains that following the proposed reorganization, all retail functions previously performed by the Telco will be the sole responsibility of SAI. All network facilities and personnel necessary to operate and maintain those facilities will remain in the Telco to enable the Telco to meet the full requirements of the 1996 Federal Act. Following the reorganization, the Telco maintains that it will continue to provide to all CLECs, including SAI, nondiscriminatory access to its network facilities and services just as now. Consequently, under the proposed reorganization, SAI will not own network, or control access to the Telco network facilities and therefore, will not have the ability to satisfy the ILEC duties as imposed by §251(c) of the 1996 Federal Act. The Company, therefore, concludes that there is no justification for finding that SAI will be a "successor or assign" of the Telco following the proposed reorganization.

Additionally, the Company cites a recent FCC order as guidance on the interpretation of the "successor or assign" provision of the 1996 Federal Act as well as the FCC's view toward the status of ILEC affiliates that offer local exchange services.¹⁰ According to the Company, the FCC offered comment on these issues in an order concerning the relationships between the regulated business units of the Regional Bell Operating Companies (RBOCs) and the separate affiliates required of the RBOCs under 47 U.S.C. §272 to enter the interexchange services markets. Citing the FCC Order, the Company argues that since SNET will not be transferring ownership of any unbundled network elements to SAI, SAI should not be treated as an "assign" of the Telco. The Company also argues that the FCC has expressly confirmed that a BOC may establish a separate affiliate that will itself provide local exchange service, perhaps as a reseller of the BOC's bundled services or unbundled network elements. According to the Company, the FCC's touchstone in determining whether SAI should be subject to more extensive regulation as an ILEC is whether SAI controls "network elements" that should be made available to other CLECs. The Company argues that, because the Telco will control all required "network elements" and make them available on a nondiscriminatory basis to all requesting carriers (including SAI), it is improper to treat SAI as an ILEC. The Company thus concludes that, while the Telco will remain an ILEC under federal law and a telephone company/public service company under Connecticut law and will continue to satisfy all requirements imposed upon it by virtue of those classifications, SAI will be a CLEC and should be regulated as such.

While acknowledging that SAI may have a local service market share that is larger than other CLECs at the time of the reorganization, the Company asserts that this factor alone is not sufficient cause to construe SAI to be a "successor or assign" subject to ILEC obligations under the 1996 Federal Act. The Company argues that examining SAI's market power only in the retail local exchange market is improper and misleading. The Company claims that the relevant market in which SAI will compete following the proposed reorganization will be, at a minimum, the overall Connecticut

¹⁰First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, FCC 96-489, released Dec. 24, 1996 ("Non-Accounting Safeguards Order").